

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 7742**

**BILL NUMBER: SB 525**

**DATE PREPARED:** Feb 20, 1999

**BILL AMENDED:** Feb 18, 1999

**SUBJECT:** Operating while intoxicated (OWI) and open containers.

**FISCAL ANALYST:** Mark Bucherl, Jim Sperlik

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**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) (A) This bill makes it: (1) a Class C misdemeanor for a person to operate a vehicle with at least 0.10% by weight of alcohol in the person's blood or breath; and (2) a Class A misdemeanor for a person to operate a vehicle with at least 0.15% by weight of alcohol in the person's blood or breath. It also requires a court to order a person who has been convicted of operating a vehicle while intoxicated: (1) to be imprisoned for at least five days or to perform at least 30 days of community service and to successfully complete an alcohol or a drug abuse deterrent program if the person has one previous conviction of operating a vehicle while intoxicated; and (2) to be imprisoned for at least ten days or to perform at least 60 days of community service and to successfully complete an alcohol or a drug abuse deterrent program if the person has at least two previous convictions of operating a vehicle while intoxicated.

(B) This bill requires a court to enter the either of the following orders if a person has at least two convictions for operating while intoxicated during a five year period: (1) That the person may not operate a motor vehicle after the person's driving privileges have been reinstated unless the motor vehicle is equipped with a functioning certified ignition interlock device. (2) That all motor vehicles owned by the person must be impounded or immobilized. It also provides that whenever the court orders the impoundment or immobilization, the court shall order: (1) forfeiture; or (2) the revocation or suspension of each motor vehicle license plate or certificate of registration; pertaining to all motor vehicles exclusively owned by the person.

(C) This bill makes it a Class B infraction for the operator of a motor vehicle to, while the motor vehicle is in operation, knowingly allow an alcoholic beverage container that has been opened, that has a broken seal, or from which some of the contents have been removed to be in the passenger compartment of the motor vehicle. It also provides an exemption for: (1) the passenger compartment of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; and (2) the living quarters of a motor home or house trailer.

**Effective Date:** July 1, 1999.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) (A) *State Penalty Provisions:* This bill creates new Class A & B misdemeanors provision for violations involving OWI. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class A misdemeanor is \$5,000; for a Class B misdemeanor it is \$1,000. Criminal fines are deposited in the Common School Fund. For cases filed in circuit, superior, county or municipal courts of record, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the State General Fund. If cases are filed in city or town courts, 55% of the fee would be deposited in the State General Fund. Over 10,000 persons were involved in misdemeanor OWI offenses in CY 1998.

In removing the current OWI requirement to charge an open container offense, additional court cases may occur. Revenue to the State General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class B infraction is \$1,000 which is deposited in the State General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

**Federal Implications:** The Indiana Department of Transportation (INDOT) reports that failure to pass an “open container” law during the course of the Transportation Equity Act for the 21st Century (TEA 21) would mean that the State would have federal highway funds transferred from construction and maintenance programs to alcohol-impaired driving countermeasure programs. TEA 21 will be in effect from 1998 through 2003. The INDOT has identified the possible impact (penalties) with no “open container” law. These possible federal penalties are listed in the table below:

<b>Penalty</b>	<b>Fiscal Year</b>	<b>Amount</b>
1.5% of NHS, STP, and IM*	2001	\$5.4 million
1.5% of NHS, STP, and IM*	2002	\$5.4 million
3% of NHS, STP, and IM*	2003	\$11.1 million

\*NHS National Highway System  
STP Surface Transportation Program  
IM Interstate Maintenance

The INDOT reports that the above penalties are estimated based on the assumption that no “open container” laws are passed during the course of TEA 21 and no “repeat offender” laws are passed during this time period. The penalty amounts would be transferred from NHS, IM, and STP to a State’s Section 402 Safety apportionment. Funds transferred to Section 402 must be used for alcohol-impaired driving countermeasures or enforcement of driving while intoxicated (DWI) or driving under the influence (DUI) and other related laws.

Also, in targeting high blood alcohol content, this bill may allow Indiana to qualify for a federal safety incentive grant of between \$107,000 and \$343,000 a year.

(B) The impact of this provision will depend upon the number of indigent persons who are required to have ignition interlocks installed in their vehicles. Ignition interlocks cost about \$50 to install. In addition, there is a cost of approximately \$2.00 per day to cover the cost of monitoring the reports that come in from service

providers. The fund affected is the Alcohol and Drug Countermeasures Fund.

**Explanation of Local Expenditures:** A Class A misdemeanor is punishable by up to one year in jail, while a Class B misdemeanor is punishable by 180 days. This bill also provides for mandatory and lengthened jail time or optional community service for successive offenses. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. Community service oversight is provided by court probation offices.

**Explanation of Local Revenues:** (Revised) If additional infraction and misdemeanor actions are filed and judgments entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 infraction court fee (27% of the \$120 misdemeanor fee) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.(2) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

(B) The cost to immobilize or impound a vehicle is usually borne by the vehicle owner. Local unit may, under statute, sell abandoned vehicles as unclaimed property if they are not retrieved by owners. In practice, the Bureau of Motor Vehicles assumes the responsibility for sales. (Only the cities of Indianapolis, Evansville, Fort Wayne, New Albany and South Bend assume the responsibility and revenue for sales of abandoned vehicles.)

This bill also allows the seizure of vehicles belonging to persons with two or more OWI convictions within a five year period. Items seized by police may be sold, and the proceeds deposited to the unit that employed the local law enforcement officers, the state General Fund, and/or the Common School Fund, depending on the value of the sales.

**State Agencies Affected:** Department of Transportation; Criminal Justice Institute.

**Local Agencies Affected:** Trial courts, local law enforcement agencies; those entities that receive federal highway funds potentially affected by the provisions of this bill.

**Information Sources:** David Sutherlin, Bureau of Motor Vehicles, 232-7403; Dennis Faulkenberg, Deputy Commissioner and Chief Financial Officer of the INDOT, 232-1472; Catherine O'Connor, Director of the Criminal Justice Institute, 232-2560.